IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4704 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHD. AYUB @ BABBOO SHAKIR HUSSAIN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/07/2000

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 1/3/2000 passed by the Commissioner of Police, Ahmedabad city, and he has been

declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the detenue has submitted that the order of detention indicates that the detenue is involved in one criminal case and that the activities mentioned in the grounds of detention relates to the disturbance of law and order situation and the same has nothing to do with the disturbance of public order situation. The detaining authority has not properly considered the distinction between the law and order situation and the public order situation and passed the impugned order of detention without application of mind. Learned counsel submitted that only two offences are registered against the detenue being Cr.R. No. 140/97 of Vejalpur police station and Cr.R. No.3002/2000 of DCB Ahmedabad city police station, dated 22/4/97 and 23/2/2000 respectively, wherein the statements of two independent witnesses have been recorded by the authority on 28/2/2000 & 29/2/2000 and the same have been verified by the authority on 1/3/2000 and the detention order has been passed on the same day i.e. 1/3/2000.

4. Mr.Dave, learned AGP has vehemently opposed this petition and contended that the impugned order of detention is just and proper and the petition deserves to be dismissed.

5. Considering the overall facts of the case, together with the grounds mentioned in the impugned order of detention, in my opinion, the petition deserves to be allowed only on one ground that the statements of the two witnesses have been recorded on 28/2/2000 and 29/2/2000 and the same have been verified on the 1/3/2000 and the impugned order of detention has been passed on the very same day, which shows total non-application of mind on part of the detaining authority.

6. For the aforesaid reasons, the petition is allowed. The impugned order of detention dated 1/3/2000 passed by the Commissioner of Police, Ahmedabad city is hereby quashed and set aside. The detenue - Mohd. Ayub @ Babboo Shakir Hussain Shaikh, is hereby ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute with no orders as to

costs.

*****

parmar*